

SPECIAL CIVIL APPLICATION NO. 5879 of 1993

DATE OF DECISION : 06-09-1995

For Approval and Signature :

THE HON'BLE MR. JUSTICE A.N DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

Shri P.B Majmudar, Advocate for the Petitioner.
Shri K.C Shah, APP for Respondents No. 1 & 2
Respondent No. 3 - served.
Shri Tushar Mehta, Advocate for Respondent No. 4

CORAM : A.N. DIVECHA, J.
6-9-1995

ORAL JUDGEMENT

The Notification issued on 5th December 1992 and published in The Gujarat Government Gazette (Extraordinary) on 9th March 1993 is under challenge in this petition under

Article 226 of the Constitution of India. Thereby retrospective effect was given to the Notification issued on 16th November 1991 under section 9 (2) of the Gujarat Panchayats Act, 1961 ("The Act" for brief).

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the Development Commissioner {Respondent No. 2 herein} issued one Notification on 16th January 1971 under Section 9 (2) of the Act excluding the area comprising of Survey Nos. 41 and 42 from the village, named, Jawanpura, and included the same in the Nagar Panchayat of Idar. Its copy is at Annexure-A to this petition. As transpiring therefrom, it was to come in effect from the date of its publication in the Government Gazette. It may be mentioned that the validity thereof was challenged by means of certain litigations and interim orders were obtained against its publication in the Government Gazette. It could not therefore be published for quite some time. By its order passed on 16th June 1992 in Special Civil Application No. 3544 of 1992, this Court directed holding of elections to the Nagar Panchayat of Idar including therein Survey Nos. 41 and 42 of village Jawanpura. A copy of the aforesaid Order passed by this Court on 16th June, 1992 as at Annexure-B to this petition. Thereupon, a Notification came to be issued by Respondent No. 2 on 5th December 1992 published in the Government Gazette (Extraordinary) on 9th March 1993 giving retrospective effect to the Notification at Annexure-A to this petition. A gazetted copy of the aforesaid Notification issued on 5th December 1992 is at Annexure-C to this petition. The petitioner has questioned its validity by means of this petition under Article 226 of the Constitution of India.

3. It cannot be gainsaid that the validity of the Notification at Annexure-A to this petition has been upheld as transpiring from the preamble to the Notification at Annexure-C to this petition. The validity of the Notification at Annexure-C to this petition has been challenged only on the ground that it gives retrospective effect to the Notification at Annexure-A to this petition without its publication in the Government Gazette. In support of this submission, the learned advocate for the petitioner has relied on the unreported ruling of this Court in Special Civil Application No. 1582 of 1969 decided on 12th March 1970, some portion of which is found reproduced in (1970) 7 Guj. Law Times at p-64.

4. It cannot be gainsaid that, sitting as the single, I am bound by the aforesaid Division Bench ruling of this Court. Even otherwise, I am in respectful agreement therewith. It cannot also be gainsaid that the Notification at Annexure-C to this petition gives retrospective effect to the Notification at

Annexure-A to this petition. That is contrary to the aforesaid binding Division Bench ruling of this Court. It has been urged that, in order to give effect to the notification at Annexure -A to this petition, the same is required to be published in the Government Gazette and it cannot be brought into effect by any other notification even though the subsequent notification is published in the Government Gazette.

5. Ordinarily I would have upheld the challenge to the Notification at Annexure-C to this petition on the aforesaid ground. However, on the peculiar facts and circumstances of the case, the relief claimed by the petitioner in this petition need not be granted in exercise of the discretionary power vested in this Court under Article 226 of the Constitution of India. The reason therefor is quite simple. As transpiring from the preamble to the notification at Annexure "C" to this petition the Notification at Annexure-A to this petition could not be published in view of challenge to its validity by means of certain litigations and grant of interim orders by Courts therein. In the meantime, as aforesaid, by the order at Annexure-C to this petition, this Court permitted the authorities to hold elections to the Nagar Panchayat of Idar by including within its limits Survey Nos. 41 and 42 of Village Jawanpura. The effect of the order of this Court at Annexure-B to this petition would be to give effect to the Notification at Annexure-A to this petition. It appears that, pursuant to the order of this Court at Annexure-B to this petition, Notification at Annexure-C to this petition has been issued. It thus becomes clear that not only the validity of the Notification at Annexure-A to this petition has been upheld by this Court, but this Court has also given effect to it by its order at Annexure-B to this petition. It is not in dispute that, pursuant thereto elections to the Nagar Panchayat of Idar were held including within its limits the area comprising of Survey Nos. 41 and 42 of Village Jawanpura. That means the effect to the Notification at Annexure-A to this petition was fully given without its publication in the Official Gazette. In that view of the matter, issuance of the Notification Annexure-C to this petition was a mere formality. It is these peculiar facts and circumstances of this case which has prompted me to uphold the validity of the Notification Annexure-C to this petition bringing it into effect retrospectively from the date of the Notification at Annexure-A to this petition without publication of the latter in the Official Gazette.

6. In view of my aforesaid discussion, the notification at Annexure-C to this petition calls for no interference by this Court and its validity deserves to be upheld.

7. In the result this petition fails. It is hereby

rejected. Rule is accordingly discharged with no order as to costs.
